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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8 Montana Office
301 South Park, DWR 10096
Helena, Montana 59626-0096

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March 19, 1998

Betty Beniger, Chairperson
East Helena Citizen's Advisory Council/Committee
P.O. Box 712
East Helena, MT 59635

Dear Ms. Beniger:

This letter is in response to your letter of March 2, 1998, which raised two questions regarding the ASARCO/EPA Consent Decree and related events.

The Council's first question regarded the availability of the Consent Decree. In your letter you state that Scott Brown of EPA assured the Council on February 11, 1998 that copies of the Consent Decree were available at the East Helena City Hall. On the morning of February 12th, Mr. Brown realized that he had been mistaken. Mr. Brown immediately obtained several copies of the Consent Decree and hand delivered them to City Hall. These copies were available a full week prior to the start of the public comment period for the Consent Decree. Additionally, this office has been providing copies of the Consent Decree to East Helena residents and local governments on request and free of charge.


With respect to your second question, the Miscellaneous Receipts Act, 31 U.S.C. Section 3301, mandates that any penalties collected by an Agency (EPA) be returned to the treasury as miscellaneous receipts. The EPA is not allowed to allocate penalty money to any other recipient other than the treasury. Therefore, ASARCO cannot pay any of the penalty directly to any other entity. The EPA does have discretion to accept a Supplemental Environmental Project (SEP) proposed by a Defendant, to mitigate a portion of the gravity component of the penalty. In the Consent Decree there is a SEP (proposed by ASARCO and approved by EPA and the Department of Justice) that calls for the restoration of wetlands and upland vegetation in the Upper and Lower Lake area of the East Helena facility. EPA mitigated the gravity portion of the penalty to the full extent possible. The penalty cannot be further mitigated. During the course of negotiating this Consent Decree, ASARCO did not propose a SEP that allowed for upgrades to the East Helena water and sewer system. To my knowledge EPA did not reject this proposal as it was never presented for our review.



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Should you have additional questions regarding the Consent Decree, please do not hesitate to contact me at 441-1123 or Susan Zazzali at 441-1130, ext. 226.

Sincerely,


John F. Wardell
Director
Montana Office